

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.20 of 2003**

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Fatingan Bind, son of Ram Briksh Bind, resident of village Goraipur, P.S. Bhabhua,  
District Kaimur.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant/s : Mr. Ranbir Singh, Advocate (amicus curiae)

For the Respondent/s : Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 12-02-2018**

Since nobody appears on behalf of appellant, Mr. Ranbir Singh, Advocate has been appointed to assist this Court as amicus curiae.

2. Sole appellant stands convicted under Sections 326 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years for the offence under Section 326 IPC and three months for the offence under Section 323 IPC and the sentences were directed to run concurrently vide judgment dated 19.12.2002 passed by Sri Rama Nand Sharma, the then 2<sup>nd</sup> Additional Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 144 of 1991/104 of 2002.

3. Prosecution case, which was initiated on the basis of complaint petition of P.W.1 Ram Lakhan Bind, in short, is that on



19.4.1981 at about 12 noon while he was coming from khalian he saw the appellant fleeing away from his house armed with garasa and other accused persons were taking away bundle of clothes and box from his house and when he reached at his house he saw his wife in injured condition and she disclosed that appellant has assaulted her by garasa causing injury on her head and the appellant further attempted to assault her but one witness caught hold the garasa. It is further alleged that accused persons snatched a silver Hasuli from her neck.

4. The aforesaid complaint petition was sent for registering a case before the police under Section 156(3) Cr.P.C. and on that basis Bhabhua P.S.Case No. 236 of 1989 was registered under Sections 323, 324, 307 and 380 IPC.

5. After investigation police has found the complaint case not true but on protest petition cognizance has been taken and after commitment the case traveled to the file of Sri Rama Nand Sharma, the then 2<sup>nd</sup> Additional Sessions Judge, Kaimur at Bhabhua for trial and disposal.

6. Charges were framed against the appellant under Sections 326 and 307/34 IPC and against other accused under Sections 307/34 IPC and accused Ramashish Bind and Kausi Devi were charged under Sections 323 IPC.

7. In order to prove its case prosecution has examined



altogether six witnesses, they are P.W.1 Ram Lakhan Bind, informant and husband of injured Kabutri Devi, P.W.2 Rameshwar Prasad, a formal witness who has proved formal F.I.R., P.W.3 Toofani Bind, who claims to be eye-witness to the occurrence, P.W.4 Moti Devi, who claims to be eye-witness to the occurrence, P.W.5 Bishwanath Choudhary, a formal witness who has proved the injury report and P.W.6 Dr. Jay Shankar Mishra, who has examined the injured Kabutri Devi.

8. From perusal of the record it appears that the injured witness Kabutri Devi has not been examined and there is a report that Kabutri Devi died. Defence has examined one witness as D.W.1 Bigan Singh and from his statement it appears that he has proved the Sulahnama.

9. Apart from the ocular evidence the following documents have been admitted into evidence on behalf of the prosecution as Exhibits, they are Ext.1 formal F.I.R. and Ext. injury report. On behalf of defence the following documents have been brought on record as Exhibits, they are Ext.A certified copy of F.I.R. of Bhabhua P.S.Case No. 113 of 1990, Ext.B certified copy of charge sheet of Bhabhua P.S.Case No. 113 of 1990, Ext.C Station Diary Entry No. 416 of 1989 dated 19.4.1989 and Ext.D signatures on compromise petition.

10. Learned trial court after conclusion of trial has acquitted



the appellant from the charge under Section 307/34 IPC and accused Ramashish Bind and Kausi Devi from the charge under Section 323 IPC. However, he has convicted the appellant under Sections 326 and 323 IPC and sentenced them as stated above.

11. Contention of learned amicus curiae is that the conviction of appellant appears to be not sustainable in the eye of law as the injured Kabutri Devi has not been examined in this case and there is no eye-witness to the occurrence though some of the witnesses have claimed to be the eye-witnesses to the occurrence and further there is delay of two days in filing complaint petition as the occurrence is dated 19.4.1989 but complaint petition was filed on 21.4.1989. Further contention of learned counsel for the appellant is that Ext.C the Station Diary Entry recorded on the basis of statement of Kabutri Devi (injured) gives a different story, and disclosed that there was quarrel between the children and there is allegation of assault by wife of appellant by stick, whereas in the complaint petition manner of occurrence is completely different.

12. Learned counsel for the State has supported the judgment of conviction on the ground that wife of informant Kabutri Devi was assaulted by means of Garasa by the appellant and the same has been supported by P.Ws. 1, 3 and 4, who claim to be eye-witnesses to the occurrence, as such, there is no infirmity in the impugned judgment



and that does not require any interference by this Court.

13. From perusal of the evidence adduced on behalf of defence it appears that a case was lodged by Dhunia Devi, wife of the appellant, with respect to an occurrence dated 4.5.1990 under Sections 376/34 IPC against Radha Bind and Shyamlal Bind, which has been marked as Ext.A and charge sheet filed in that case has been marked as Ext.B and Station Diary Entry (Ext.C) of Kabutri Devi (injured) is on the basis of her statement with respect to the occurrence dated 19.4.1989, the date of occurrence in the present case in which she has stated that there was quarrel between the children of both the parties in which wife of appellant came and assaulted by stick. Hence Ext.C, which is certified copy of Station Diary Entry, creates a serious doubt on the manner of occurrence. Ext.D is the petition in which compromise has been arrived at between the parties. Further, present complaint petition has been filed on 21.4.1989 with respect to occurrence dated 19.4.1989 which was sent for registration of the case, as such it appears that there are two versions of the same occurrence, one lodged by Kabutri Devi which is Station Diary Entry No.416 of 1989 dated 19.4.1989 (Ext.C) and another lodged by P.W.1, husband of Kabutri Devi, who according to his own evidence, does not appear to be an eye-witness. It further appears that the Doctor who has examined the injured has not been examined in this



case and P.W.1 is not an eye-witness and P.Ws. 3 and 4 claim to be eye-witnesses to the occurrence and have supported the prosecution case and P.W.3 has stated that on hulla when he reached there he saw the appellant armed with Garasa and he assaulted Kabutri Devi by Garasa. However, in cross examination in paragraph-8 he has stated that he saw bandage on the head of wife of informant. Similarly, P.W.4 in paragraph-7 of his evidence has stated that Kabutri Devi had stated about the occurrence and, as such, this witness appears to be a hearsay witness. In such a situation, non-examination of I.O. certainly caused serious prejudice to the appellant and further P.Ws. 1, 3 and 4 claim their source of information on the basis of statement of Kabutri Devi but Kabutri Devi has not been examined in this case. P.W.5 is a formal witness, who has proved the injury report (Ext.2) and P.W.6 is Doctor, who has found the following injuries on the person of Kabutri Devi, wife of Ramlakhan Bind :

(i) One incised wound 3" x 1" x bone deep on the back portion of left side of scalp.

(ii) One swelling 2" x 1" back portion of left shoulder.

Nature of injury No.(i) is grievous and dangerous to life and caused by sharp cut weapon such as Garasa.

Injury No.(ii) is simple caused by hard blunt substance.

14. Considering the fact it appears that Kabutri Devi has herself made statement before the police and for that Station Diary



Entry was made (Ext.C), which is complete variance with the narration of manner of occurrence as given in the complaint petition. Moreover, in this case Kabutri Devi herself has not been examined and other witnesses do not appear to be eye-witnesses to the occurrence. In such a situation and also considering Ext.C there appears to be a shadow of doubt about the manner of occurrence as alleged by the prosecution. Learned trial court has not considered the above discrepancies, while convicting the appellant under Sections 326 and 323 IPC.

15. Accordingly, I find merit in this appeal. Hence it is allowed. The impugned judgment of conviction and order of sentence are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

**(Vinod Kumar Sinha, J)**

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